

- (8) Tenant relocation requirements as per Article 15, Housing Replacement, shall be met. The seller or converter of the unit shall be responsible for any tenant relocation costs.
- (9) The neighborhood is not overburdened with other day care centers.
- (c) **Large day care center:** A state-licensed facility providing day care services for children without regard to the number of children served shall be:
 - (1) A permitted use in a commercial or industrial zoning district.
 - (2) A conditional use in residential districts.
 - (3) Considered a nonresidential use and subject to the requirements of Article 15, Housing Replacement.
 - (4) Large day care centers shall be subject to the parking requirements of Article 10.

Demolition: See Low or moderate-income housing.

Design review: Design review is the review of height, bulk, open space, massing, traffic access, circulation, parking, landscaping and all other site and architectural features.

Duplex: A structure designed and constructed for two (2) separate living units, regardless of the type of construction.

Dwelling: A building or portion thereof used exclusively for residential purposes, including one-family, two-family, and multiple-family dwellings, but not including hotels and boarding or lodging houses.

Dwelling unit: A room or set of rooms fitted with a private bath and kitchen facilities comprising an independent, self-contained dwelling unit occupied by a family and where rooms are not let to individuals.

Dwelling unit, single detached: Free standing residential structure containing a single family unit occupied by a single nonprofit housekeeping unit, but not including group quarters; see definition of "family" and where rooms are not let to individuals.

Estimated Cost Calculation: Fees are calculated based upon building construction, alteration, and/or site improvement expenses. Not included in this figure is the purchase price of the land and the final interior finishes relative to a specific tenant, ie. specialized equipment, finishes, furniture, drapes, etc.

→ **Family:** One or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit, but not including group quarters such as dormitories, sororities, fraternities, convents, and communes.

Floor area ratio: The ratio of gross floor area to gross site area.

Building Code of the City of Burlington, Title 5, Chapter 1, Revised Ordinances of 1962, as amended, incorporating the currently adopted editions of the National Board of Fire Underwriters Building Code and Fire Codes, shall prevail.

(1) Accessory Building or Use:

A use, or detached building, which is subordinate to the main use, or building, and located on the same lot with the main building or use, the use of which is customarily incidental to that of the main building or to the use of the land. Where a substantial part of a wall of an accessory building is part of the wall of a main building, or where an accessory building is attached to the main building, such accessory building shall be counted as a part of the main building.

(2) Alteration:

Alteration means the rearrangement of interior space, including the addition of walls, halls, steps, elevators, escalators, the rearrangement of the exterior bearing walls, including new doors, windows, exits or facades, but not including ordinary maintenance or repairs.

(3) Apartment House:

A building or portion thereof used or designed to be used as a residence for three (3) or more families living in units independently of one another.

(4) Boarding or Rooming House:

A building or premises, other than a hotel, inn, motel, tourist court or lodging house, where less than five (5) rooms are let and where meals may be regularly served by prearrangement for compensation; not open to transient guests; in contradistinction to hotels, restaurants, tourist homes, which are open to transients.

(5) Building Lot:

A building lot is that area of land described in an application for a building permit or an application to the Board of Adjustment for a permit or a variance, or otherwise defined as the area on which a structure is to be constructed or a certain use is to be carried on. A building lot shall not include any part of a street which is relied upon to qualify the lot as to frontage.

(6) Design Review:

Design review is the review of Height, Bulk, Open Space, Massing, Traffic Access, Circulation, Parking, Landscaping and all other architectural features, as provided for in Section 6526 Waterfront Design Control District, by the Planning Commission.

(7) Family:

One or more persons occupying a dwelling unit and living as a single non-profit housekeeping unit, but not including group quarters such as dormitories, sororities, fraternities, convents, and communes. ←

(8) Floor Area:

Net floor area: The interior floor area of a dwelling unit, exclusive of basements, stair wells, halls, bath rooms, corridors, attics, walls, partitions and attached accessory buildings.

Gross floor area: the exterior measurement of a building exclusive of porches, stairs and all other structures not enclosed by interior walls.

(9) Garage:

A building or structure or a portion thereof in which motor vehicles or equipment are housed.

a. Garage, private: a garage, but not for commercial repair of vehicles, or the commercial storage or rental of more than two (2) stalls.

b. Garage, public: a garage, other than a private garage, as defined

CITY OF BURLINGTON

Two
In the Year One Thousand Nine Hundred

Sponsor:

Montroll, Bushor, Shaver

ORDINANCE

First reading: 8-9-99

Referred to: Ordinance Committee

Rules suspended and placed in all

stages of passage:

Second reading: 10-16-00

Action: Passed

Date: 10-16-00

Signed by Mayor:

Published:

Effective:

An Ordinance in Relation to

APPENDIX A, ZONING #2000-01

Residential Districts Established

(Quality of Life - Zoning Approach)

It is hereby Ordained by the City Council of the City of Burlington, as follows:

That the Code of Ordinances of the City of Burlington be and hereby is amended by amending
Appendix A, Zoning, Sec. 3.1.4, Residential Districts Established, subsections (a) and (b);

Sec. 30.1.2, Definitions (Dwelling Unit and Family); and Sec. 17.1.5, Conditional Uses to add a
new subsection (d), to read as follows:

Sec. 3.1.4 Residential Districts Established. The following residential districts are established:

Residential-low density (RL), waterfront residential-low density (WRL), residential-medium density (RM and WRM) and residential-high density (RH). Each of these districts is intended to secure for the persons who reside there a comfortable, healthy, safe, and pleasant environment in which to live, sheltered from incompatible and disruptive activities that properly belong in nonresidential districts. Certain nonresidential uses, including public and semi-public uses and neighborhood-oriented commercial and service uses, are permitted in certain residential districts upon conditional use approval.

(a) The RL and WRL districts are intended primarily for low density residential development in the form of single detached dwellings, and/or planned residential developments. In such RL and WRL districts, occupation of a dwelling unit is limited to members of a family as defined in Article 30, Section 30.1.2. If the dwelling unit contains at least twenty-five hundred (2500) square feet excluding its attic and basement, it may be occupied by more than four (4) unrelated adults if the building also contains at least an additional two hundred fifty (250) square feet per adult occupant in excess of four (4) and if the proposed use is also approved as a conditional use by the Zoning Board of Adjustment. Notwithstanding the foregoing, the minimum square footage requirements shall be reduced by ten (10%) percent in situations where the residential premises are owner occupied. Except as otherwise provided for by this ordinance, density is limited to 4.4 dwelling units per acre.

An Ordinance in Relation to APPENDIX A, ZONING #2000-01
Residential Districts Established

(b) The RM district is intended primarily for medium density residential development in the form of single detached dwellings, duplexes, apartments, and/or planned residential developments. The waterfront medium density district (WRM) is intended to establish a neighborhood which provides open space and convenient lake access. In such RM and WRM districts, occupation of a dwelling unit is limited to members of family as defined in Article 30, Section 30.1.2. If the dwelling unit contains at least twenty-five hundred (2500) square feet excluding its attic and basement and if it also contains at least an additional two hundred (200) square feet per adult occupant in excess of four (4), a proposed use of more than four (4) unrelated adults may be approved as a conditional use by the Zoning Board of Adjustment. Notwithstanding the forgoing, the minimum square footage requirements shall be reduced by ten (10%) percent in situations where the residential premises are owner occupied. Except as otherwise provided for by this ordinance, density is limited to twenty (20) units per acre. The waterfront medium density district (WRM) is intended to establish a neighborhood which provides open space and convenient lake access.

(c) As written.

Sec. 30.1.2 Definitions.

Family: One or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit, but not including group quarters such as dormitories, sororities, fraternities, convents and communes. Occupancy by any of the following shall be deemed to constitute a family:

1. Members of a single family, all of whom are related within the second degree of kinship (by blood, adoption, marriage or civil union).
2. A "functional family unit" as defined in Art. 30, Sec. 30.1.2(1).
3. Persons with disabilities as so defined in Title VII of the Civil rights Act of 1968, as amended by the "Fair Housing Amendments Act of 1988".
4. A state registered or licensed day care facility serving six or fewer children as required by 24 V.S.A. 4409(2), as the same may be amended from time to time.
5. No more than four unrelated adults and their minor children.

Provided, that a dwelling unit in which the various occupants are treated as separate roomers cannot be deemed to be occupied by a family.

For purposes of this definition of family, a group of adults living together in a single dwelling unit and functioning as a family with respect to those characteristics that are consistent with the purposes of zoning restrictions in residential neighborhoods shall be regarded as a "functional family unit" and shall also qualify as a family hereunder.

An Ordinance in Relation to APPENDIX A, ZONING #2000-01
Residential Districts Established

(1) In determining whether or not a group of unrelated adults is a "functional family unit" under the standard set forth above, the following criteria must be present:

(a) The occupants must share the entire dwelling unit. A unit in which the various occupants act as separate roomers cannot be deemed to be occupied by a functional family unit.

(b) The household must have stability with respect to the purpose of this chapter. Evidence of such stability may include but not be limited to, the following:

[1] Minor dependent children regularly residing in the household, and school-age children are enrolled in local schools.

[2] Proof of the sharing of expenses for food, rent or ownership costs, utilities and other household expenses and sharing in the preparation, storage and consumption of food.

[3] Whether or not different members of the household have the same address for purposes of:

[a] Voter registration.

[b] Drivers' licenses.

[c] Motor vehicle registration.

[d] Summer or other residences.

[e] The filing of taxes.

[4] Common ownership of furniture and appliances among the members of the household.

[5] Employment of householders in the local area.

[6] A showing that the household has been living together as a unit for a year or more, whether in the current dwelling unit or other dwelling units.

[7] Any other factor reasonably related to whether or not the group or persons is the functional equivalent of a family.

(2) The initial determination of whether a "functional family unit" status exists shall be made by the Code Enforcement Office ("CEO"). The burden will rest upon the individuals claiming "functional family status" to submit information to the CEO to substantiate their claim. Some of the information provided to the CEO as part of a "functional family unit" status request, as well as the CEO's initial determination, may be highly confidential and, thus, will be maintained in a separate "red envelope" in the property file. It will be left to the CEO to determine whether the information is sensitive enough to be retained in the "red envelope". Information maintained in the "red envelope" will be considered confidential and thus used only by the CEO. Access to the "red envelope" by persons outside of the CEO will only be allowed under court order or during litigation regarding said property.

Dwelling unit: A room or set of rooms fitted with a private bath, and kitchen, and living facilities comprising an independent, self-contained dwelling unit space occupied by a family, and where rooms are not let to individuals. Bathroom, kitchen and living facilities must be separate and distinct from bedroom facilities. Each bedroom must contain a minimum square footage consistent with the current minimum housing standards. Separate bathroom facilities will be deemed to exist only when it is possible to access such bathroom facilities without passing through a room which is designated as a bedroom. If there is more than one meter for any utility, address to the property, or kitchen; or if there are separate entrances to rooms which

An Ordinance in Relation to APPENDIX A, ZONING #2000-01
Residential Districts Established

could be used as separate dwelling units; or if there is a lockable, physical separation between rooms in the dwelling unit such that a room or rooms on each side of the separation could be used as a dwelling unit, multiple dwelling units are presumed to exist; but this presumption may be rebutted by evidence that the residents of the dwelling share utilities and keys to all entrances to the property and that they (A) share a single common bathroom as the primary bathroom or (B) share a single common kitchen as the primary kitchen. Each dwelling unit must have a minimum of one hundred eighty (180) square feet of parking space on the premises for every two occupants thereof, such parking area may not be in the front yard.

Sorority/Fraternity: A multiple dwelling used and occupied by a cooperating group of university or college students and containing and providing domestic and social facilities and services thereto.

2. Sec. 17.1.5 Conditional Uses.

(a) through (c) As written.

(d) In considering a request for a conditional use permit relating to a greater number of unrelated individuals residing in a dwelling unit within the RL, WRL, RM and WRM districts than is allowed as a permitted use, in addition to the criteria set forth in Subsection (a) hereof, no conditional use permit may be granted unless all facilities within the dwelling unit, including bathroom and kitchen facilities are accessible to the occupants without passing through any bedroom. Additionally, each room proposed to be occupied as a bedroom must contain at least one hundred twenty (120) square feet. There must also be a parking area located on the premises at a location other than the front yard containing a minimum of one hundred eighty (180) square feet for each proposed adult of the dwelling unit in excess of the number of occupants allowed as a permitted use. All other green space standards must be observed.

2002 WL 34151285 (Vt. Envtl. Ct.) (Trial Order)
Vermont Environmental Court.

In re: Appeal of John MENTES.

No. 132-6-00 Vtec.
May 10, 2002.

Decision and Order on Cross-Motions for Summary Judgment

Merideth Wright, Environmental Judge.

Appellant John Mentes appealed from the May 31, 2000 decision of the then-Zoning Board of Adjustment (ZBA) of the City of Burlington, affirming the Zoning Administrator's decision not to take enforcement action against Appellees Charles and Cynthia Burns under the 1999 Zoning Regulations¹. Appellant is represented by Norman Williams, Esq.; Appellees Charles and Cynthia Burns are represented by Stuart M. Bennett, Esq.; the City is represented by Kimberlee J. Sturtevant, Esq.

In October 2001 the Court ruled on summary judgment on some issues in the matter. In February 2002, after the parties had failed to agree on working definitions of the five illustrative terms in the "group quarters" definition, the Court directed that this matter be set for trial. However, the parties again requested to submit the remaining issues by summary judgment.

In the October 2001 order, the Court noted that the ordinance did not present a choice between either "a single nonprofit housekeeping unit" or "group quarters." Rather, to fall within the zoning use category of 'single detached dwelling,' the occupants of the house must satisfy *both* prongs of the definition of family. The October 2001 order found that the shared student housing at issue in the present case met the first prong of this test, in that the students were living as a single, nonprofit housekeeping unit, but found that material facts were disputed as to whether or not they also fell outside of the category of "group quarters."

The present motion asks the Court to determine whether the 'shared housing' use of the house falls within the category of "group quarters," that is, whether it is similar to or different from the "group quarters" examples of dormitories, sororities, fraternities, convents, or communes. The parties agreed as to definitions of the terms 'convent' and 'commune'², but did not in the end agree on definitions of dormitory, sorority or fraternity.

Because of that lack of agreement, the parties went off on a tangent aimed at further defining the terms 'dormitory,' 'sorority' and 'fraternity.' That focus was misplaced for two reasons. First and most importantly, 'group quarters' is defined by example only, not by an exclusive list. It is less important precisely to define these terms than it is to understand their common elements, and to determine whether the shared student housing use of Appellees' property shares those common elements. Second, Appellant's April 1, 2002 filing is correct that the use of the terms in the ordinance is a legal question, not a question of material fact suitable either for presentation by affidavit or by evidence.

The use categories of dormitories, sororities and fraternities are all provided for in some zoning districts within the City, notably those zoning districts associated with colleges and universities. Their common element is housing for students living as a group, that is, with shared dining, bathroom, and living room or common room facilities. They do not imply any philosophical commonality. The residents have the opportunity to share meals and household responsibilities.

The use categories of convent and commune do not imply that the residents are students, but do share the common element that the residents are living as a group, as opposed to renting single rooms in a motel or renting single dwelling units such as studio apartments. The residents share meals and household responsibilities.

Appellees argue that the shared student housing use of their property is distinct from these 'group quarters' uses, in that the residents are not members of a larger organization and are merely a group of friends who wanted to live together, at least while they were attending college.

We must conclude from the ordinary meaning of the terms used in the ordinance that the shared student housing use of Appellees' property is similar to the five listed 'group quarters' uses, especially that of commune, in that the students are living as a group and share household chores and responsibilities. Therefore it does fall within the 'group quarters' exclusion of the 1999 Ordinance, and is prohibited under the ordinance, even though the students are living in a house and as a single, nonprofit housing unit.

The parties did not in the end brief the question of whether the 1999 ordinance was unconstitutional due to the fact that this type of group quarters use (shared student housing) is not otherwise provided for anywhere in the City. Indeed, not only did Appellees argue that this shared student housing use did not fall within the category of 'group quarters,' but Appellees also argued that the 'group quarters' category was a constitutional category under equal protection analysis. In any event, the Court will not reach a constitutional argument unnecessary to the outcome of a particular case and not raised by the parties.

The present ruling, that the shared student housing use of Appellees' house is prohibited under the 1999 ordinance, concludes the above-captioned appeal. Any further challenge to that ordinance is not presented by the Statement of Questions for the present appeal.

Done at Barre, Vermont, this 10th day of May, 2002.

Merideth Wright

Environmental Judge

Footnotes

- 1 The Zoning Regulations have since been amended with respect to their treatment of shared housing.
- 2 Commune: Any closely-knit community primarily organized to share a common philosophy; a relatively small, often rural community whose members share common interests, work, and income and often own property collectively.
Convent: a community of persons devoted to religious life and a common religious faith; a building or buildings occupied by such a society.

In connection with this determination, the parties may want to brief the constitutionality, on equal protection grounds, of the category of "group quarters" residential uses, especially regarding those such uses (including convents, communes, and perhaps also this type of shared student housing) not otherwise provided for in the Zoning Ordinance.

We will hold a conference in person at the Costello Courthouse, Monday October 29, 2001 at noon, to discuss how the parties may wish to proceed.

Done at Barre, Vermont, this 22nd day of October, 2001.

Merideth Wright

Environmental Judge

Footnotes

- 1 We note that the parties have not provided this decision and therefore the Court's understanding of it is deduced from the parties' memoranda.
- 2 The parties do not address whether the property is leased to students at the present time, or whether such a use is allowed or addressed by the 2000 Zoning Ordinance. Accordingly, the only question in the present case is whether this use of the property was allowed or was a violation under the previous (1999) Zoning Ordinance.
- 3 Public/Institutional use categories include the residential uses of "sorority/fraternity" and "dormitory," under the category of "College/Schools/Educational Institutions."
- 4 It appears to the Court that the Zoning Ordinance uses the term "commune" in its 1960s sense to mean a communal living arrangement, rather than in the 1790s French Revolution sense stated by Appellees of a self-governing town or village.

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2001 WL 35959904 (Vt.Env'tl. Ct.) (Trial Order)
Vermont Environmental Court.

In re: Appeal of John **MENTES**.

No. 132-6-00 Vtec.
October 22, 2001.

Decision and Order on Cross-Motions for Summary Judgment

Merideth Wright, Environmental Judge.

Appellant John **Mentes** appealed from the May 31, 2000 decision of the then-Zoning Board of Adjustment (ZBA) of the City of Burlington, affirming the Zoning Administrator's decision not to take enforcement action¹ against Appellees Charles and Cynthia Burns under the 1999 Zoning Regulations. Appellant is represented by Norman Williams, Esq.; Appellees Charles and Cynthia Burns are represented by Stuart M. Bennett, Esq.; the City is represented by Kimberlee J. Sturtevant, Esq. Appellant and Appellees have each moved for summary judgment.

Appellant has moved for summary judgment that the use by seven unrelated students of Appellees' property at 36 North Willard Street falls within the definition of "group quarters" rather than that of a single-family home, in violation of § 5.1.4, § 30.1.2, and Table 5-A of the Burlington Zoning Ordinance. Appellees have moved for summary judgment that the § 30.1.2 definition of "family" is unconstitutionally vague.

The following facts are undisputed unless otherwise noted.

Appellees own a seven-bedroom single-family residence at 36 North Willard Street in the City's Residential-Low Density zoning district. The residence has a common kitchen and living room, two common bathrooms, seven bedrooms, common parking, and a common back yard. The house has one electric meter, one gas meter, and one telephone line. None of the bedroom doors has a lock.

By a lease executed on January 29, 1999, Appellees rented the house as a whole, that is, not divided into separate apartments or rented out as separate rooms, to seven students of the University of Vermont (UVM), for a term of one year, from June 1, 1999 to May 31, 2000. By a lease executed on March 16, 2000, Appellees again rented the property to seven UVM students under a one-year lease from June 1, 2000 to May 31, 2001.² Four of the named lessees under the 1999 lease remained lessees under the 2000 lease. During the summers of each lease period, some subtenants lived at the residence, instead of the named lessees. Generally the tenants shared household expenses by paying their respective shares of the rent or utility bills, either to the landlord or the utility, or to the specific lessee in whose name the utility service was registered.

Residential use categories provided for as such³ in the Zoning Ordinance (Table 5-A) are apartments and attached dwellings, duplexes, planned residential developments, and single detached dwellings. Special residential use categories are bed and breakfast uses, boarding houses, community houses, convalescent homes, daycare homes and group homes. No explicit provision is made in the Zoning Ordinance for residential uses associated with convents or other religious communities, for residential uses associated with communes, for residential uses associated with shared student housing, or for residential uses associated with private membership clubs (such as ski or sailing clubs or fraternal organizations). Fraternities and sororities are specifically excluded from the definition of 'membership club.' Fraternities and sororities, dormitories, convents and communes⁴ are specifically excluded from the definition of "community house."

No argument is made in the present case that the use made of this property was either an apartment or a boarding house use; none of the other residential or special residential use categories listed in Table 5A is applicable. Rather, Appellees argue that the house was used within the definition of "single detached dwelling;" while Appellant argues that the group of lessees failed to meet the definition of family and therefore that their use of the house violated the requirement that the house be used as a "single detached dwelling."

A single detached dwelling unit is defined in the "Definitions" section of the Zoning Ordinance (§ 30.1.2) as a:

Free standing residential structure containing a single family unit occupied by a single nonprofit housekeeping unit, but not including group quarters; see definition of "family" and where rooms are not let to individuals.

Appellees' property is a free-standing residential structure. Rooms are not let to individuals. It therefore qualifies as a "single detached dwelling" use if the seven students fall within the definition of a single family unit, *and* if their occupancy does not constitute "group quarters."

The term "family" is, in turn, defined as:

One or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit, but not including group quarters such as dormitories, sororities, fraternities, convents, and communes.

The parties have presented their arguments as if the ordinance presents the choice between either "a single nonprofit housekeeping unit" or "group quarters." It does not do so. Rather, to fall within the zoning use category of 'single detached dwelling,' the occupants of the house must satisfy *both* prongs of the definition of family. First, they must be living as a single, nonprofit housekeeping unit. Second, even if they are living as a single, nonprofit housekeeping unit, they must *also* fall outside of the category of "group quarters." Unfortunately, neither the term "group quarters" nor the term "single nonprofit housekeeping unit" is defined in the Zoning Ordinance. The parties have focused entirely on the interpretation of 'single nonprofit housekeeping unit,' but it is the use of the concept of 'group quarters' that is more troubling in this ordinance.

The concept of 'single nonprofit housekeeping unit' is not as vague or as stringent as either Appellant or Appellees argue. The students were living as a single nonprofit housekeeping unit, in that they shared the use of all of the residence in common, other than each resident's bedroom, and paid their proportional shares of the utilities and the rent. Nothing in the ordinance requires a determination of the permanence or intent of the residents. Even when an ordinance is defined in terms of a functional family unit, "courts have interpreted this phrase in a rather elastic way, generally ruling that any living arrangement which makes use of unified housekeeping facilities satisfies such an ordinance." 2 Edward H. Ziegler, Jr., *Rathkopf's The Law of Zoning* § 17A.03(a) (Release #69, 3/99).

However, it is more difficult to determine whether the 'shared housing' use of this house falls within the category of "group quarters." First, none of the parties has analyzed how to determine whether the students' shared housing use is similar to or different from the "group quarters" examples of dormitories, sororities, fraternities, convents, or communes. Further, while dormitories, fraternities and sororities are provided for in the Zoning Ordinance as conditional uses in at least two zoning districts, the remaining 'group quarters' types of residential uses, including convents and communes, do not appear to be provided for anywhere in the City. However, none of the parties has addressed the issue of whether this distinction is rationally related to a legitimate governmental purpose in the ordinance.

Accordingly, based on the foregoing, it is hereby ORDERED and ADJUDGED that both Motions for Summary Judgment are DENIED, as material facts are in dispute as to whether the shared housing use by the students falls within the category of "group quarters," that is, whether it is similar to or different from dormitories, sororities, fraternities, convents, and communes.